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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 375th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 May 1999, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.375/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Mauritius (CAT/C/43/Add.1)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Mr. Dabee, Mr. Baichoo, Mrs. Dwarka-Canabady and Ms. Narain (Mauritius) took places at the Committee table.

2. The CHAIRMAN invited the Alternate Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of Mauritius (CAT/C/43/Add.1).

3. Mr. EL MASRY (Alternate Country Rapporteur) read out the following text:

"1. The Committee considered the second periodic report of Mauritius (CAT/C/43/Add.1) at its 368th, 371st and 375th meetings, held on 28 and 29 April and 3 May 1999 (CAT/C/SR/368, 371 and 375) and has adopted the following conclusions and recommendations:

A. Introduction

2. The Committee welcomes the report of Mauritius, submitted on time and supplemented and updated by the Solicitor-General of the State party, who introduced it. The above clearly reflects the continuing efforts of the State party to comply with its international human rights obligations.

B. Positive aspects

3. The Committee takes note of the following, inter alia, positive aspects, many of which closely follow upon recommendations made by it during the consideration of the initial report:

(a) The abolition of the death penalty;

(b) The recent coming into force of the Protection of Human Rights Law which establishes the National Human Rights Commission, the competence of which includes examination of torture complaints;

(c) The amendment of article 16 of the Constitution in order to prohibit discrimination based on gender;

(d) The training programmes for the police and other law enforcement officials with a human rights component.

C. Factors and difficulties impeding the application of the provisions of the Convention

4. No factors or particular difficulties emerged as a result of the consideration of the report by the Committee and it was clear that the State party, a developing country, is to the best of its ability carrying out its obligations under the Convention.

D. Subjects of concern

5. The Committee is concerned about the fact that, six years after its accession to the Convention and four years after the consideration of its initial report, the State party had failed to incorporate into its internal legislation important provisions of the Convention, namely:

(a) A definition that encompasses all cases covered by article 1 of the Convention;

(b) Article 3 of the Convention in toto, i.e. covering not only extradition but also expulsion and return (refoulement); and

(c) The provisions of article 5, paragraphs 1 (b) and (c) and 2, in conjunction with those of articles 8 and 9.

E. Recommendations

6. The Committee recommends that the State party should take the following measures:

(a) Enact legislation defining torture in accordance with article 1 of the Convention and considering it as a specific crime;

(b) Clarify through appropriate legislation that superior orders can never be invoked as a justification of an act of torture;

(c) Introduce legislation that would give effect to all the provisions of article 3 of the Convention by preventing extradition, return and expulsion of persons where they may be in danger of being subjected to torture;

(d) Take legislative measures to establish universal jurisdiction as required by article 5 of the Convention;

(e) Apprise the Committee of the results of the investigation and judicial inquiries into the death, whilst in custody, of Mr. Kaya; and

(f) Ensure that all instances of torture, and especially those resulting in death, are promptly and effectively investigated by an independent body and that the perpetrators are brought immediately to justice."

4. Mr. BAICHOO (Mauritius) thanked the Committee for considering the report and for its recommendations on measures to be taken to improve implementation of the Convention. He was particularly grateful that Mr. El Masry had recognized that reporting obligations for the human rights treaty bodies could represent a substantial burden for developing countries. He also took the opportunity to thank the Office of the United Nations High Commissioner for Human Rights for its assistance in preparing the Human Rights Bill, which had established a National Human Rights Commission. When she had addressed the fifty-fifth session of the United Nations Commission on Human Rights, the High Commissioner had said that international cooperation for capacity building at the national level was a cornerstone of the human rights endeavour. At the same session, Mauritius had supported a resolution calling for early adoption of a draft optional protocol to the Convention against Torture.

5. The CHAIRMAN thanked the delegation for its cooperation. The Committee was delighted to see a constructive dialogue taking place, and was particularly pleased that the delegation included the Solicitor-General, who had taken the time to respond to the Committee members' questions.

6. The delegation of Mauritius withdrew.

The meeting was suspended at 3.20 p.m. and resumed at 3.30 p.m.

Second periodic report of Bulgaria (CAT/C/17/Add.19)

7. At the invitation of the Chairman, Mr. Draganov, Mr. Gantchev, Mr. Steffanov and Mr. Vladimirov (Bulgaria) took places at the Committee table.

8. The CHAIRMAN invited the Bulgarian delegation to reply to the questions asked by members of the Committee at the 372nd meeting.

9. Mr. DRAGANOV thanked the Committee members for their observations and questions, which would certainly prove useful in improving the country's legislation and practice. The dialogue that was taking place would be of immense importance in improving the legislative effort under way to implement the letter of the Convention.

10. Turning to comments and questions raised by Mr. Sørensen, the Country Rapporteur, he said that the Bulgarian delegation was prepared to submit a consolidated third and fourth report by July 2000 to bring the country's reporting up to schedule. He also recognized that the absence of a definition of the crime of torture in the national legislation was a substantial lacuna. An initiative to meet the requirement of Article 4 of the Convention by introducing provisions covering the crime of torture in the Penal Code had broken down owing to administrative problems, but was soon to be resumed. As mentioned in paragraph 9 of the second periodic report (CAT/C/17/Add.19), many of the elements of a definition already existed in the national legislation.

11. Mr. Sørensen had expressed concern that detainees were kept in the same premises after their cases had been referred for investigation, and that those premises did not meet sanitary and other requirements for a long stay. In the

past two years, responsibility for the places of preliminary detention had been transferred from the Ministry of the Interior to the Ministry of Justice and renovations had been carried out, thus solving many of the problems. A new facility which met the highest international standards had been built in Sofia by the Specialized Investigation Service (formerly the National Investigation Service).

12. A question had been raised concerning the possibility of appeal and assistance by defending counsel when a child was sentenced to a term in a correctional facility. The Code of Criminal Procedure stipulated that when an adolescent from 14 to 18 years of age was convicted, the sentence could be appealed against and a lawyer could be present. In cases where minors were placed in corrective boarding schools under articles 61 and 64 of the Penal Code, no provisions existed for appeal, as the corrective placement was considered a favourable alternative to penal sanctions. In any case the presence of a lawyer was obligatory and the parents or foster parents were informed and invited to take part. Decisions by local commissions to place children in corrective boarding schools were subject to review by a judge, who was obliged to see the child upon the request of the child or the parents. Since such decisions were not ordinary criminal procedures, the presence of a lawyer was not required. However, the minor could be defended by a teacher, a parent or another representative.

13. Mr. Sørensen had also asked what regulations currently governed the work of the corrective boarding schools, pending approval of the new regulations mentioned in paragraph 15 of the report. The schools were managed by the Ministry of Education according to existing by-laws. The maximum stay at such institutions had been set by law at three years. For children who had no one to look after them, under the Combating Antisocial Behaviour by Minors and Adolescents Act a number of full-time schools, temporary stay institutions and facilities for street children had been established. In addition, several children's villages had been set up by the non-governmental organization (NGO), SOS-Kinderdorf International.

14. Unless otherwise specified in a bilateral treaty, the Code of Criminal Procedure stipulated that extradition requests were considered by three judges and a prosecutor. The foreign citizen was by right entitled to a lawyer and, if necessary, an interpreter. Appeal was possible, and the decision of the court of appeal was definitive.

15. Under the Penal Code, foreign citizens who committed the crime of torture outside Bulgaria would be held responsible. If the victim was a Bulgarian national, the perpetrator would be prosecuted in all cases. If both the perpetrator and the victim were citizens of countries which had not ratified the Convention against Torture, the perpetrator would be brought to justice only if a bilateral agreement so required.

16. The periodic review of the rules, instructions, methods and practices used for the interrogation, detention and treatment of suspects, detainees and convicts was carried out, as needed, by the bodies which had adopted them. The process was supervised by the appropriate inspection units of the Ministry of Justice.

17. Places of detention were inspected by officials from the Ministry of the Interior or the Ministry of Justice. Inspections by international and national NGOs were also permitted. The findings were made public by the press services of the ministries and were carried in the media.

18. Regarding the right of detainees to have contact with their lawyers and with the outside world and to obtain medical care, the Constitution, the Code of Criminal Procedure and the Ministry of the Interior Act stipulated that from the moment of arrest, detainees were guaranteed the right to contact a lawyer. They further provided that prior to conviction detainees were entitled to one visit per month, but in practice weekly visits were allowed with the permission of the prison director. In low-security facilities inmates had the right to unlimited telephone contacts. Medical care was available at places of detention, but access to a doctor and the right to a medical examination were not guaranteed for persons held at police stations. His delegation would appreciate any recommendations from the Committee on ways to overcome that shortcoming.

19. Noting that paragraph 50 of the periodic report mentioned 46 cases of torture, including 5 involving death, Mr. Sørensen had wondered whether the number reported was an underestimate. His reply was that those were the only statistics his delegation could provide, and that they reflected the number of cases registered under the Convention.

20. With regard to continued detention after expiry of the sentence, the 144 cases mentioned in paragraph 47 of the report were a matter of concern but were not typical. Penitentiary bodies were obliged to inform the prosecutor of the beginning and ending dates of the sentence served. In the event of deliberate arbitrary deprivation of liberty, the officials concerned could be sentenced to 3 to 10 years' imprisonment under the Penal Code. Moreover, victims of continued detention could file claims for compensation from the State.

21. Mr. Sørensen had asked whether the cases of torture to which the report referred included data from the National Investigation Service. They did not, as such data were currently unavailable. However, the Service was undergoing a reform which should lead to judicial review of its practices and more transparency with regard to possible cases of torture.

22. As to why Bulgarian citizens did not make use of the possibility of sending claims to the Committee against Torture instead of the European Court of Human Rights, he could only reply that it was not due to lack of information on the Convention against Torture, which was an integral part of education on human rights in Bulgaria.

23. Bulgaria would look into the possibility of marking the International Day in Support of Victims of Torture on 26 June, and was considering the allocation of a contribution to the United Nations Voluntary Fund for Victims of Torture.

24. In answer to Mr. Yakovlev's, question about protection of the Roma population against discrimination, Bulgaria had no specific legislation on the prevention of discrimination against minorities and ethnic groups. It had,

however, recently ratified the Council of Europe's Framework Convention for the Protection of National Minorities, and that would certainly influence future standard setting. Discrimination on the basis of ethnicity was prohibited by provisions of the Constitution, the Penal Code and other national legislation detailed in the consolidated twelfth, thirteenth and fourteenth periodic report of Bulgaria to the Committee on the Elimination of Racial Discrimination (CERD/C/299/Add.7). The Bulgarian Government had also established a National Council on Demographic and Ethnic Issues which, with the participation of over 150 Roma organizations, had drawn up a framework programme on the integration of Roma in society. A special law on discrimination would soon be adopted, establishing a governmental body to prevent, identify and help solve problems relating to discrimination against the Roma.

25. Independent mechanisms currently monitoring the use of force and firearms included the judiciary, the media and human rights NGOs. There had also been discussion in recent years about the possible establishment of an Ombudsman's office, and such an institution might well be established in the near future.

26. The use of firearms was specified as a last resort under domestic legislation. In certain cases, a warning was required. The police and armed forces were permitted to use firearms during armed attack or threat by firearm, in imperative self-defence, in the release of hostages, in arresting a perpetrator, and in preventing a detainee from escaping. An order issued by the Ministry of the Interior in October 1998 prohibited the use of firearms in two cases: if the life of a third party was endangered, and to apprehend fleeing suspects, except in imperative self-defence.

27. In answer to Mr. Silva Henriques Gaspar, the Code of Criminal Procedure did not specifically refer to evidence produced through torture, but did provide certain guarantees: the accused had a right to ask for a lawyer to be present during an interrogation; a sentence could not be based on the accused's confession alone; and any officer committing torture faced prosecution.

28. Mr. Mavrommatis could rest assured that the Convention had been directly incorporated into domestic legislation.

29. The crime of driving someone to suicide, referred to in paragraph 8 of the report, was considered a crime of torture if committed by a person acting in an official capacity for purposes specified in article 1 of the Convention.

30. The Code of Criminal Procedure, in line with the Convention, precluded extradition of a foreign citizen if that person would be subjected to violence, torture or other cruel, inhuman or degrading treatment or punishment in the requesting country, and if that country did not provide for the protection of the rights stipulated in the Code.

31. In paragraph 47 of the report, "late announcement of sentences" referred mainly to bureaucratic delays. With reform of the judiciary currently under way, it was to be hoped that such delays would be avoided in the future.

32. The Government would take steps to provide the Special Rapporteur on Torture of the Commission on Human Rights with the informtion requested as soon as possible.

33. The CHAIRMAN expressed his hope that any further delay would be avoided.

34. Mr. SØRENSEN (Country Rapporteur), responding to the delegation's request for recommendations on the provision of medical care at police stations, observed that a call-in system would suffice. It was important to ensure that detainees were offered a choice of physicians to conduct an examination on request, for that was one of the safeguards against torture.

35. Mr. DRAGANOV (Bulgaria) said that a call-in system was already in place. A choice of physicians did tend to be offered in practice, but that safeguard should indeed be legislated for.

36. Mr. YAKOVLEV (Alternate Country Rapporteur) welcomed the independence of the judiciary, but stressed that during preliminary investigations an independent agency, such as an ombudsman, was also vital.

37. The CHAIRMAN thanked the delegation for its willingness to engage in dialogue.

38. The delegation of Bulgaria withdrew.

The public part of the meeting rose at 4.00 p.m.